

Health and Human Services

307.7001

(1) The Project Officer may restrict place of performance (hence restrict an offeror's or contractor's telecommuting) for any part of an SOW/PWS, after determining that the work or any portion thereof must be performed at a specified place of performance; or security would be compromised. The Project Officer must document this determination in writing and send a copy of the determination, along with the SOW/PWS, to the Contracting Officer. The Project Officer must also address in an HHS AP (or other acquisition request document) any performance requirements or security considerations that restrict place of performance—see 307.71.

(2) In accordance with *FAR 7.108(a)*, if the Contracting Officer concurs with the Project Officer's determination in (a)(1) above, then the Contracting Officer must sign the Project Officer's determination; include it in the official contract file; and specify any prohibition against telecommuting in the solicitation and resultant contract.

(3) In accordance with *FAR 7.108(a)*, if the Contracting Officer decides to restrict a place of performance that the Project Officer did not restrict, then the Contracting Officer must document in writing the determination to preclude telecommuting in part or in whole; include the determination in the official contract file; and specify any prohibition against telecommuting in the solicitation and resultant contract.

(b) If the Contracting Officer disagrees with the Project Officer's determination in (a)(1) above, then the Contracting Officer shall return both the SOW/PWS and determination to the Project Officer for further consideration.

(c) The Contracting Officer shall ensure that authorized telecommuting of contractor employees does not result in increased cost or price to the Government.

Subpart 307.70—Considerations in Selecting an Award Instrument

307.7000 Scope of subpart.

This subpart provides guidance on the appropriate selection of award instruments to fulfill program needs con-

sistent with 31 U.S.C. 6301–6308. This subpart explains the use of the contract as the award instrument for acquisition relationships and a grant or cooperative agreement as instruments for financial assistance relationships.

307.7001 Distinction between acquisition and assistance.

(a) 31 U.S.C. 6301–6308 requires the use of contracts to acquire property or services for the direct benefit or use of the Government and grants or cooperative agreements to transfer money, property, services, or anything of value to eligible entities to accomplish a public purpose of support or stimulation authorized by Federal statute.

(b) OPDIVs shall use a contract as the legal instrument to reflect a relationship between the Government and an entity whenever the—

(1) Principal purpose of the instrument is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Government; or

(2) Government determines in a certain situation that specific needs can be satisfied best by using the acquisition process. However, this authority does not permit circumventing the criteria for use of acquisition or assistance instruments. Use of this authority is restricted to extraordinary circumstances and requires the Associate DAS for Acquisition's prior approval.

(c) OPDIVs shall use a grant or cooperative agreement as the legal instrument to reflect a relationship between the Government and an entity whenever the principal purpose of the relationship is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute.

(1) OPDIVs shall use a grant when no substantial programmatic involvement is anticipated between the Government and the recipient during performance of the contemplated activity.

(2) OPDIVs shall use a cooperative agreement when substantial programmatic involvement is anticipated between the Government and the recipient during performance of the contemplated activity.

(d) As a general rule, OPDIVs shall use contracts for the following purposes:

(1) Evaluation (including research of an evaluative nature) of the performance of Government programs or projects or grantee activity initiated by the funding agency for its direct benefit or use.

(2) Technical assistance rendered to the Government, or on behalf of the Government, to any third party, including those receiving grants or cooperative agreements.

(3) Surveys, studies, and research which provide specific information desired by the Government for its direct activities, or for dissemination to the public.

(4) Consulting services or professional services of all kinds if provided to the Government or, on behalf of the Government, to any third party.

(5) Training projects where the Government selects the individuals or specific groups whose members are to be trained or specifies the content of the curriculum (not applicable to fellowship awards).

(6) Production of publications or audiovisual materials the Government requires primarily for the conduct of its direct operations.

(7) Design or development of items for Government use or pursuant to agency definition or specifications.

(8) Conferences conducted on the Government's behalf.

(9) Generation of management information or other data for Government use.

307.7002 Procedures.

(a) OPDIV program officials shall use existing budget and program planning procedures to propose new activities and major changes in ongoing programs. OPDIV program officials shall meet with the HCA and the Chief Grants Management Officer, or their designees, as necessary, to determine whether award is to be made through the acquisition or assistance process. This determination shall normally occur prior to the time when the AAP is reviewed and approved so that the AAP will reflect all known proposed contract actions. The HCA shall fully document a shift from one award in-

strument to another in the appropriate files to show a fundamental change in program purpose that unequivocally justifies the rationale for the shift.

(b) The Contracting Officer shall confirm the appropriateness of the use of the contract instrument when reviewing the AP or other acquisition request document.

(c) OPDIVs shall ensure that the choice of instrument is in accordance with 31 U.S.C. 6301–6308 and applicable HHS policies. If, however, there are major individual transactions or programs which contain elements of both acquisition and assistance in such a way that they cannot be characterized as having a principal purpose of one or the other instrument, OPDIVs shall obtain guidance from ASFR/OGAPA/DA, through appropriate acquisition channels, including the HCA, before proceeding with a determination.

(d) Any public notice, program announcement, solicitation, or request for applications or proposals, or request for quotations shall indicate whether the intended relationship will be one of acquisition or financial assistance and specify the award instrument the OPDIV will use.

Subpart 307.71—Acquisition Plan

307.7100 Scope of subpart.

FAR 7.102 requires acquisition planning for all acquisitions. This subpart establishes: (a) when a written AP is required; (b) its contents and format; and (c) the need for review of the AP to certify that it is accurate, complete, and in the proper format. This subpart also establishes the documentation requirements for those acquisitions not requiring an AP.

307.7101 Policy.

(a) An AP is required for all acquisitions, to be placed by an HHS contracting office, expected to exceed \$500,000 (inclusive of options) with the following exceptions:

(1) Letter contracts.

(2) Unsolicited proposals.

(3) Regulated utility services available from only one source.

(4) Proposals under the Small Business Innovative Research (SBIR) and